



Insurance Department

State of Utah

GARY R. HERBERT

Governor

SPENCER J. COX

Lieutenant Governor

TODD E. KISER

Acting Commissioner

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: July 14, 2014

Time: 9:00AM

Place: East Bldg., Copper Room

MEMBERS

(Attendees=x)

COMMISSION MEMBERS

xChair, Kirk Smith, *Weber Cnty*

xMatt Sager, *Maricopa Cnty, AZ*

xCo-Chair, Larry Blake, *Washington Cnty*

xSylvia Andersen, *Public Member*

xJeff Wiener, *Salt Lake Cnty*

DEPARTMENT STAFF

xPerri Babalis, *AG Counsel*

xBrett Barratt, *Deputy Comm.*

Mark Kleinfeld, *ALJ*

xSuzette Green-Wright, *MC Dir.*

xTammy Greening, *Examiner*

xJilene Whitby, *PIO Recorder*

Public

David Moore

Tige Garner

Bill Rowley

Petet Stevens

Carol Yamamoto

Mike Smith

Bob Rice

Matt Ryder

Wade Taylor

Blake Heiner

MINUTES

General Session: (Open to the Public)

- **Welcome / Kirk Smith, Chair**

At 9:04am Kirk started the meeting. He noted Jeff would be a little late.

- **Adopt Minutes of Previous Meeting**

Motion to adopt the minutes by Sylvia, seconded by Larry, vote was unanimous.

- **Annual Review of Open Meetings' Act / Perri**

Provided handout prepared by legislative council. Perri noted changes made legislatively to the Open and Public Meetings Act. She reviewed main points that dealt with the Commission and pointed out changes recently made to the Act, including: attachments are to be provided in an electronic or hard copy form; minutes are to be posted within three days of a meeting; the Utah Public Notice Website is to have the minutes and audio of meeting posted to it; allows for electronic meetings; and noted penalties for violating the Act. Perri also reviewed requirements for a closed meeting and reasons to hold an emergency meeting, along with notification requirements.

- **Reports**

- **Concur with Licensee Report / Tammy**

Motion by Larry to concur with the report, seconded by Sylvia, vote was unanimous.

- **Concur with Complaint & Enforcement Report / Suzette**

Suzette noted that they are getting caught-up on old cases. Many of them of very complicated.

- Matt asked for the status of E-case 3356. Tammy said respondent failed to respond to notices sent by the Department and the check they used to pay for a forfeiture bounced.

Motion by Matt to concur with the report, seconded by Larry, vote was unanimous.

- **Request for Dual Licensee Expedited Request: None**

- **Request for Attorney Exemption:** Kyle C. Dart
Mr. Dart was not present. **Motion** by Sylvia to approve the Mr. Dart's exemption, seconded by Matt, vote was unanimous.
- **Administrative Proceedings Action / Mark Kleinfeld, ALJ**
 - **Stipulation & Order:** None
 - **Request for a Hearing:** None
 - **Order to Show Cause:** None
 - **Informal Adjudicative Proceeding & Order:** None
 - **Notice of Formal Adjudicative Proceeding:** None
- **New Business**
 - **Update on Rulemaking Process for R592-2**
Motion by Matt to remove from agenda since there is no action to be taken on this rule, seconded by Larry, vote was unanimous.
 - **Discuss the Need for Clarification of Rules Regarding Retention of Escrow Records / Matt & Jeff**
Matt could find no requirements for retention of escrow records. A rule is needed to define retention requirements.
 - Larry referred to handout, Master Closing Instructions from Wells Fargo, requiring documents to be destroyed after a closing. Due to such instructions they need to move quickly to provide clear direction to the Title industry. Matt noted the law needs to comply with federal (CFPB) requirements. Jeff also noted the need to protect consumers.
 - The law requires papers from a search to be kept 15 years. There is a need to define which records are to be retained, those to be destroyed and who will do it.
 - Jeff said Section 31A-20-110 gives some guidance. Tammy said 31A-23a-412(5)(a) also applies to escrow. Jeff asked Perri and the Department to come back with their view as to whether this is a definitional change or if changes need to be made to the statute.
 - **Motion** by Matt to put this on next month's agenda and everyone review the statutes, specifically 31A-20-110, 31A-23a-412(5)(a) and Financial Institutions Title 7-22 to see what is needed to clarify the issue of escrow records retention. Larry asked if the Department could provide a letter or bulletin that would say that records should be retained for a certain period of time. Brett said the Department will review this and report to the Commission next month.
 - Jeff noted the minimum retention period would be current year plus 3 years as per 31A-23a-412.
 - Pete said the Wells Fargo wording is referring to lender, not title information. Jeff didn't think the title file could be separated from the escrow file.
 - **Motion** seconded by Larry, vote was unanimous.
- **Old Business**
 - **Discuss Proposed Rule R592-16: Prohibited Escrow Settlement Closing Transactions / Jeff**
This rule is an attempt to move from a bulletin to a rule. He referred to a fraudulent split closing in a recent newspaper article. We need to prevent these by rule if we can.
 - Larry noted that as long as we continue to do split closings, there is no way to guarantee the timing of the closing and the recording as noted in R592-16-4(2). Further discussion concluded that the wording in number 2 was already covered in Subsection (1) and in 31A-23a-406. Subsection 2 was deleted.
 - Jeff said that if they are to handle funds a policy must be issued as noted in 31A-23a-406.

- Pete expressed concern that the bulletin was being gutted and the rule was telling people what they could not do rather than giving direction. He felt the addendum should be in the rule. He suggested split closings be prohibited to protect everyone. One person suggested that if flip transactions are done back to back they should be done at one location. Larry said the Real Estate community does not use the addendum nor is it used in a flip.
- Jeff made a **motion** to strike R592-16-4(2) and remove the number 1 from the first subsection. He encouraged everyone to review the rule and come prepared to discuss it next month. Keep on the agenda. Larry seconded the motion. Matt asked that the “/” in “sales/purchases” in R592-16-2(1) be replaced with “and” as done in (2) and be included in the motion. Carol emphasized that each transaction should stand alone. It seemed like this process was creating a rule that was too wordy and complex.
- The vote was unanimous in favor of the **motion** that included Matt’s changes.
- **Other Business**
 - **Legislative – Update Re: Business & Labor Interim Meeting 7-16-2014**
Brett confirmed that the Business and Labor Interim Committee will not discuss title issues at their next meeting but anticipate doing so in the fall.
 - **Elect Chair and Co-Chair (31A-2-403(5)) / Perri**
Motion by Larry to make Jeff Weiner Chair with Kirk Smith co-chair, Sylvia seconded it and the vote was unanimous.
 - Brett asked Suzette to gather the **attorney exemption information** in the packets and destroy them. They have private information on the last two pages.
 - Kirk **recognized** the presence of Commissioner Kiser.

Executive Session – Not Needed

- **Adjourn:** **Motion** to adjourn by Matt at 10:21am, seconded by Jeff, vote was unanimous.
- **Next Meeting:** August 11, 2014, Copper Room

2014 Meeting Schedule

(2nd Monday except in October)

Jul 14	Aug 11	Sept 8	Oct 20	Nov 10	Dec 8
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